

November 24, 2008

CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

0001522814

**5 Pages**

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 UNIQUE DEPENDABLE INSURANCE SERVICES, INC.

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 MODESTO DIVISION

In Re:  
 UNIQUE DEPENDABLE  
 INSURANCE SERVICES, INC.,  
 Debtor,

Case No. 08-90779

UNIQUE DEPENDABLE  
 INSURANCE SERVICES, INC.  
 Plaintiff,

Adversary Case No. 08-09055

**WFH-12**

vs.  
 BROOKE CREDIT  
 CORPORATION, aka ALERITAS  
 CAPITAL,  
 Defendant.

Date: November 19, 2008  
 Time: 10:00 a.m.  
 Dept: D (Sacramento)  
 Judge: Robert S. Bardwil

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court having held a hearing on the Debtor's Motion for Summary Judgment on November 19, 2008; appearances having been made by Daniel L. Egan, Wilke, Fleury, Hoffelt, Gould & Birney, LLP; the Court having reviewed the pleadings and papers on file, and good cause appearing, the Court makes the following findings of fact and conclusions of law;

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November 21, 2008

CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
0001522814

FINDINGS OF FACT AND CONCLUSIONS OF LAW

**I.  
FINDINGS OF FACT**

**A. First Cause of Action**

1. On or after April 28, 2006, Alan Cheney purchased the stock of Unique Dependable Insurance Services, Inc. ("Plaintiff" or "Unique") from Defendant Brooke Franchise Corporation (later known as Brooke Capital Corporation.)

2. In the transaction, Unique executed a promissory note (the "Promissory Note") in favor of Aleritas in the approximate amount of \$3,000,000.

3. In connection with the transaction, Unique executed a security agreement (the "Security Agreement") granting Aleritas a lien on all of Unique's assets to secure payment of the Promissory Note.

4. Plaintiff Unique received no consideration in exchange for incurring the obligations set forth in the Promissory Note.

5. Plaintiff received no consideration in exchange for granting the liens created by the Security Agreement.

6. Plaintiff received no consideration in exchange for incurring obligations or granting liens pursuant to any other documents executed in connection with the transaction described in the Promissory Note and Security Agreement.

7. At all times during and after entering into the transaction described in the Promissory Note and Security Agreement, the fair market value of Unique's liabilities exceeded that of its assets.

8. The fair market value of Unique's assets was not more than \$1,050,000 on or around April 28, 2006.

9. The fair market value of Cheney & Associates Insurance Services, Inc.'s ("ACA Lodi") assets at the time of the April 2006 transaction was not more than \$126,334.

10. The fair market value of Alan Cheney & Associates Insurance Services – Modesto, Inc.'s ("ACA Modesto") assets at the time of the April 2006 transaction was not more than \$252,076.

11. The fair market value of Alan Cheney's assets at the time of the April 2006 transaction was not more than \$ 389,500.

12. At the time of the April 2006 transaction, Unique's liabilities were at least \$3.0 million.

**B. Second Cause of Action**

1. On or after April 28, 2006, Alan Cheney purchased the stock of Unique from Brooke Franchise Corporation.

2. In the transaction, Unique executed a promissory note (the "Promissory Note") in favor of Aleritas in the approximate amount of \$3,000,000.

3. In connection with the transaction, Unique executed the Security Agreement granting Aleritas a lien on all of Unique's assets to secure payment of the Promissory Note.

4. Plaintiff Unique received no consideration in exchange for incurring the obligations set forth in the Promissory Note.

5. Plaintiff received no consideration in exchange for granting the liens created by the Security Agreement.

6. Plaintiff received no consideration in exchange for incurring obligations or granting liens pursuant to any other documents executed in connection with the transaction described in the Promissory Note and Security Agreement.

7. At all times during and after entering into the transaction described in the Promissory Note and Security Agreement the fair market value of Unique's liabilities exceeded that of its assets.

8. The fair market value of Unique's assets was not more than \$1,050,000 on or around April 28, 2006.

9. The fair market value of ACA Lodi's assets at the time of the April 2006 transaction was not more than \$126,334.

10. The fair market value of ACA Modesto's assets at the time of the April 2006 transaction was not more than \$ 252,076.

11. The fair market value of Alan Cheney's assets at the time of the April 2006

1 transaction was not more than \$ 389,500.

2 12. At the time of the April 2006 transaction, Unique's liabilities were at least \$3.0  
3 million.

4 **C. Fifth Cause of Action**

5 1. Aleritas was the immediate or mediate recipient of transfers made on account of  
6 the Promissory Note in the amount of \$831,481.00.

7 **D. Sixth Cause of Action**

8 Claim No. 1 filed by Aleritas is based solely upon the Promissory Note and Security  
9 Agreement.

10 **II.**  
11 **CONCLUSIONS OF LAW**

12 1. When Plaintiff executed the Promissory Note and Security Agreement, it made a  
13 transfer without receiving reasonably equivalent value. See, Bay Plastics v. BT Commercial  
14 Corp., (In re Bay Plastics), 187 B.R. 315, 329-330 (Bankr. C.D. Cal. 1995)); Pajaro Dunes Rental  
15 Agency v. Spitters (In re Pajaro Dunes Rental Agency), 174 B.R. 557, 572 (Bankr. N.D. Cal.  
16 1994.)

17 2. Plaintiff was insolvent at the time it executed the Promissory Note and Security  
18 Agreement. See 11 U.S.C. § 101(32)(A); In re Ohio Corrugating Co., (1988 BC ND Ohio) 91  
19 BR 430; In re Goodman Industries, Inc., (1982 BC DC Mass) 21 BR 512.

20 3. Plaintiff was engaged in business with unreasonably small capital on or around the  
21 time of the transfer.

22 4. The execution of the Promissory Note and Security Agreement was avoidable  
23 under Bankruptcy Code sections 544 and 548.

24 5. Plaintiff is entitled to recover, pursuant to Section 550 of the Bankruptcy Code, the  
25 sum of \$831,481, representing transfers made by Plaintiff on account of the Promissory Note and  
26 Security Agreement.

27 6. The Claim of Defendant must be disallowed pursuant 502(d) of the Bankruptcy  
28 Code because Defendant has failed to return the avoided transfers described in paragraph 4.

Robert S. Bardwil  
Robert S. Bardwil, Judge  
United States Bankruptcy Court